

Sixth Appellate District

San Jose, California

MONDAY, DECEMBER 20, 2004

H026945 PEOPLE v. MOUSA

The judgment is affirmed. (not published)
(Elia, J.; We concur: Rushing, P.J., Premo, J.)
Filed December 20, 2004

H026270 PEOPLE v. SHEPHERD

By the Court:

On the court's own motion, the submission order in the above-entitled matter dated , is hereby vacated for the purposes of supplemental briefing pursuant to *Blakely v. Washington* (No. 02-1632. June 24, 2004) 542 U.S. ____; 124 S. Ct. 2531; 159 L.Ed.2d 403; 2004 WL 1402697; 2004 DJDAR 7581. The cause will be resubmitted upon completion of supplemental briefing.

Dated: December 20, 2004 Rushing, P.J.

H026885 PEOPLE v. HARLESS

The judgment is affirmed. (published)
(Bamattre-Manoukian, Acting P.J.; We concur: Mihara, J., McAdams, J.)
Filed December 20, 2004

TUESDAY, DECEMBER 21, 2004

H027135 CITY OF WATSONVILLE v. CALIFORNIA STATE DEPARTMENT OF HEALTH SERVICES; CALIFORNIA DENTAL ASSOCIATION, et al.; BULAICH

The order denying leave to intervene is affirmed. (not published)

(Premo, J.; We concur: Rushing, P.J., Mihara, J.)
Filed December 21, 2004

H026852 PEOPLE v. HARRISON

The judgment is affirmed. (not published)
(Bamattre-Manoukian, Acting P.J.; We concur: Mihara, J., McAdams, J.)
Filed December 21, 2004

H026805 PEOPLE v. VASQUEZ

The November 12, 2003 order denying defendant's motion to modify probation or, alternatively, vacate judgment is affirmed. (not published)

(Elia, J.; We concur: Rushing, P.J., Mihara, J.)
Filed December 21, 2004

Sixth Appellate District

San Jose, California

Tuesday, December 21, 2004 (continued)

H027116 GARDELLA v. ALEXANDER

The trial court acted well within its discretion in dismissing the action because the parties' 1998 judicially supervised settlement disposed of all issues in the case. Accordingly, the order of dismissal is affirmed. In addition, we grant respondent's separate motion for sanctions against Stephen Gardella for bringing and maintaining a frivolous appeal. Stephen Gardella is ordered to pay the sum \$7,464.10 to the Estate of Mary L. Gardella and the Mary L. Gardella Trust, jointly, and the sum \$5,000 to the clerk of this court, said payments to be made within 30 days after issuance of the remittitur herein. (not published)
(Walsh, J.*; We concur: Premo, Acting P.J., Bamattre-Manoukian, J.)

Filed December 21, 2004

(*Judge of the Santa Clara County Superior Court assigned by the Chief Justice pursuant to Article VI, Section 6 of the California Constitution.)

Sixth Appellate District

San Jose, California

Tuesday, December 21, 2004 (continued)

H025678 PEOPLE v. LAMMERS

We reverse the judgment for the limited purpose of resentencing. The trial court erred, insofar as it (1) imposed a two-year sentence enhancement under section 12022.1 based upon defendant's admission of said enhancement (without evidence that such admission was based upon a knowing and voluntary waiver of defendant's constitutional rights), (2) imposed an upper-term sentence (in violation of *Blakely*) as to each of the counts for which defendant was convicted, (3) imposed concurrent sentences with respect to counts 6 through 8, 10 through 13, and 15 without staying such concurrent sentences pursuant to section 654, and (4) imposed a \$200 parole revocation fine under section 1202.45 ex post facto.

We remand for resentencing (1) with respect to each of the 12 counts for which defendant was convicted, consistent with this opinion and *Blakely*; and (2) for determination of the truth of the enhancement allegation under section 12022.1. After resentencing, the new judgment (in addition to the new sentence imposed on the 12 counts for which defendant was convicted and any enhancement properly imposed under section 12022.1), shall (a) omit any reference to a parole revocation fine imposed under section 1202.45, stricken by this court, and (b) reflect the fact that the sentences as to counts 6 through 8, 10 through 13, and 15 running concurrent with the sentence imposed on counts 1 through 4, are stayed pursuant to section 654 as long as the judgment of conviction on counts 1 through 4 remains in full force and effect. (not published)

(Premo, J.; We concur: Rushing, P.J., Elia, J.)

Filed December 21, 2004

WEDNESDAY, DECEMBER 22, 2004

H026367 PEOPLE v. MUNOZ

The probation order is affirmed. (not published)
(Mihara, J.; We concur: Bamattre-Manoukian, Acting P.J., McAdams, J.)

Filed December 22, 2004

Sixth Appellate District

San Jose, California

Wednesday, December 22, 2004 (continued)

H026408 PEOPLE v. HERNANDEZ

The three 10-year gang enhancements imposed under section 186.22 are ordered stricken and the 15-year minimum parole eligibility of section 186.22, subdivision (b)(5) is imposed for each murder count. Additionally, the credit defendant received must be corrected to reflect 343 days of actual credit and 343 days of total credit. The trial court is directed to amend the abstract of judgment accordingly and to forward a certified copy of the amended abstract to the Department of Corrections. As modified, the judgment is affirmed. (not published)
(Mihara, J.; We concur: Rushing, P.J., Premo, J.)
Filed December 22, 2004

H026788 PEOPLE v. REDDS

The judgment is affirmed. (not published)
(McAdams, J.; We concur: Elia, Acting P.J., Bamattre-Manoukian, J.)
Filed December 22, 2004

H027042 In re WEIDER on Habeas Corpus

By the Court:

Upon the court's own motion, the submission order in the above-entitled matter filed October 5, 2004, is hereby vacated to allow the court to consider additional authorities in this matter. The matter will be deemed submitted 30 days from the date of this order.

Dated: December 22, 2004 Rushing, P.J.

H026351 SALYER, as Trustee, etc., v. SALYER, et al.

The order is reversed. Costs are awarded to appellants.
(not published)
(Mihara, J.; I concur: McAdams, J., Dissenting opinion by Bamattre-Manoukian, Acting P.J.)
Filed December 22, 2004

H027454 PEOPLE v. CORTEZ

The judgment is affirmed. (not published)
(Mihara, J.; We concur: Bamattre-Manoukian, Acting P.J., McAdams, J.)
Filed December 22, 2004

Sixth Appellate District

San Jose, California

THURSDAY, DECEMBER 23, 2004

H027351 PEOPLE v. LEONEL M.

The matter is remanded to the juvenile court with instructions: (1) to exercise its discretion in determining whether the wobbler offenses in counts 1-5 and 14 are felonies or misdemeanors; (2) to make the express declaration of that determination required by section 702; (3) to recalculate the maximum period of confinement, if necessary, consistent with its determination; (4) to recalculate the amount of restitution pursuant to section 730.6, if necessary, consistent with its determination; and (5) to modify probation conditions 8 and 9 to incorporate an explicit knowledge requirement.

(not published)

(McAdams, J.; We concur: Bamattre-Manoukian, Acting P.J., Mihara, J.)

Filed December 23, 2004